IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

R.S.A. No.3063 of 2007 (O&M)
Date of Decision : 12.10.2007

Roshni & Ors.

..... Appellants

Versus

Rattan Singh

.....Respondent

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr.K.S. Banyana, Punjab
for the appellant.

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VINOD K. SHARMA, J. (ORAL)

C.M. NO. 8567-C of 2007

This is an application under Section 5 of the Limitation Act for condoning the delay of six days in filing the appeal.

It has been pleaded that the delay has occurred due to the fault of the counsel for the appellant as the file was misplaced.

It is settled law that no party should suffer for the fault on the part of the counsel.

C.M. is allowed. The delay of six days in filing the appeal is condoned.

R.S.A. No.3063 of 2007

This regular second appeal has been filed against the judgments and decrees passed by the learned Courts below decreeing the suit filed by the plaintiff for possession.

The plaintiff respondent filed a suit for possession of land measuring 1 Kanal 6 Marlas comprised in Khewat No. 35 Khatoni No. 78 Rect. No. 17 Killa No. 7/1/1 situated within the revenue estate of village Rawanhera on the grounds inter alia that the plaintiff was owner of the property detailed above and the defendant appellants were in possession of the suit land against the will and consent of the plaintiff.

On notice having been issued, the suit was contested. Besides taking number of preliminary objections, it was pleaded that the defendant appellants were in possession of land measuring 2 Kanals 16 Marlas comprised in Rect. No. 17 Killa No. 7/1. It was also claimed that defendant appellants were in possession of land as owners and, therefore, the plaintiff was not entitled to seek possession from the defendants. A counter claim was also raised that in case the defendants fail to prove that they were owners in possession of the suit land under the registered sale deed in their favour, then in that case, they were entitled to seek declaration to the effect that the defendants and before them their predecessors, being in possession of the suit land for more than 12 years, continuously, openly and adversely without payment of any rent or Batai to anyone and as a right have become the owners of the suit land by adverse possession.

However, the learned counsel for the appellants points out that the plea of adverse possession was subsequently withdrawn by the appellant-defendants.

On appreciation of evidence, the learned Courts below have recorded a concurrent finding of fact that the plaintiff respondent was owner of 1 Kanal 6 Marlas of land comprised in Rect. No. 17 Killa No. 7/1/1

whereas the defendants were owner of the land measuring 2 Kanals 16 Marlas pertaining to Khasra No. 17/7 Min.

The learned Courts below, therefore, have come to the conclusion that the plaintiff being owner in possession of the land measuring 1 Kanal 6 Marlas in Rect. No. 17 Killa No.7/1/1 was entitled to possession thereof. Though, the plea of adverse possession was withdrawn, it was observed that the said plea certainly shows that plaintiff was owner of the land possession whereof was sought. The learned lower appellate Court dismissed the appeal by observing as under :-

> "No doubt the predecessor in interest of defendants/appellants have purchased the agricultural land measuring 2 Kanals 16 Marlas pertaining to the Khasra No. 17/7 min from Smt. Sham Kaur as shown in Ex.D5 and they have been shown in possession over the said land measuring 2 Kanals 16 Marlas. Therefore, from the revenue record, there is no dispute that the plaintiff/respondent has been shown owner of the land measuring 1 kanal 6 Marlas pertaining to Khasra No. 17/7/1/1 whereas the defendants/appellants have been shown owners in possession of the land measuring 2 Kanals 16 Marlas pertaining to Khasra No. 17/7 min. The plaintiff/respondent has filed the suit for seeking the possession against the defendants/appellants on the basis of his ownership whereas the defendants/appellants have taken the pleas that on account of their long continuous possession, they have become owners by way of ripening into adverse possession. However, there is nothing on the file as to when the possession of the

defendants/appellants became adverse to the true owner and in the absence of any specific point of time as to when their possession became adverse and hostile to the true owner, no possession whatsoever long it may be, can ripen into the ownership by way of adverse possession on account of prescription of time. Therefore, in view of the facts and circumstances of the case, the taking of plea of adverse possession by the defendants/appellants, the court has to infer that the defendants/appellants have failed to prove their onwership over the Khasra No. 17/7/1/1 either by positive assertion or by ripening of ownership on account of adverse possession whereas on the contrary, the learned trial court has rightly come to the conclusion that the plaintiff has proved his ownership over the Khasra No. 17/7/1/1 measuring 1 Kanal 6 Marlas. Therefore, the learned trial court has rightly come to the conclusion on the basis of evidence produced before the court that the plaintiff/respondent has proved his ownership over the Khasra No. 17/7/1/1 measuring 1 Kanal 6 Marlas. Therefore, there is no illegality or infirmity in the reasoned findings recorded by the learned trial Court and as such the learned trial court has rightly decreed the suit of the plaintiff / respondent for possession and thus while affirming the impugned judgment and decree, the present appeal fails and same is hereby dismissed with costs. Decree-sheet be prepared accordingly. Trial Court record be sent back forthwith."

The learned counsel appearing on behalf of the appellants vehemently contended that once the defendant appellants were in possession of land measuring 2K-16M only it was admittedly in their ownership, the suit could not have been decreed and, therefore, the judgment and decree suffers from misreading of the documentary as well as oral evidence brought on record.

The learned counsel for the appellants further contends that the decree for possession against the appellant could not have been filed as the land of the plaintiff respondent was different from the land in ownership of the appellant defendants.

After hearing the learned counsel for the appellants, I find no force in the contentions raised by the learned counsel for the appellants. It is not in dispute that the plaintiff respondent sought possession of land measuring 1K-16M in khasra No. 17/7/1/1 which is admittedly under the ownership of the defendant appellants and, therefore, it cannot be said that the findings recorded by the learned Courts below is outcome of misreading of evidence. The other contentions raised by the learned counsel for the appellants also cannot be accepted as the decree is specific and suit for possession has been decreed qua khasra No.7/1/1.

No ground, therefore, is made out to interfere with the concurrent findings of fact recorded by the learned Courts below. No substantial question of law arises in the present appeal.

Dismissed.

12.10.2007 **(VINOD K. SHARMA)**
'sp' **JUDGE**